

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

GABE BEAUPERTHUY, et al. on behalf  
of themselves and all others  
similarly situated,

Plaintiffs,

v.

24 HOUR FITNESS USA, INC., a  
California corporation d/b/a 24  
Hour Fitness; SPORT AND FITNESS  
CLUBS OF AMERICA, INC., a  
California corporation d/b/a 24  
Hour Fitness,

Defendants.

No. 06-00715 SC

ORDER GRANTING IN  
PART AND DENYING IN  
PART PLAINTIFFS'  
MOTION FOR LEAVE TO  
FILE MOTION TO COMPEL

**I. INTRODUCTION**

Plaintiffs Gabe Beauperthuy, et al., ("Plaintiffs") seek leave of the Court to file a motion compelling Defendants 24 Hour Fitness USA, Inc. and Sport and Fitness Clubs of America, Inc. (collectively "Defendants" or "24 Hour Fitness") to produce additional names and addresses for facilitated notice pursuant to the Court's Opt-In Order. See Mot. for Leave, Docket No. 156. Plaintiffs seek further relief from the Court in the form of an order requiring (1) that Defendants respond to certain questions regarding the list of names Defendants provided to the Notice Administrator; (2) that Defendants identify a person most

1 knowledgeable regarding compliance with the Order and make that  
2 person available for a previously-noticed deposition regarding  
3 Defendants' efforts to comply with the Opt-In Order; and (3) that  
4 within 14 days following said deposition, the parties submit  
5 briefing regarding whether sanctions are appropriate. See id.  
6 Defendants did not Oppose the Motion for Leave.

7 For the reasons set forth herein, the Court hereby GRANTS IN  
8 PART and DENIES IN PART Plaintiffs' motion.

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10 **II. BACKGROUND**

11 On May 9, 2007, the Court issued the Opt-In Order, which  
12 allowed the Plaintiffs' claims to proceed as a collective action  
13 under section 16(b) of the Fair Labor Standards Act ("FLSA"), 29  
14 U.S.C. § 216(b). See Opt-In Order, Docket No. 145, at 2.  
15 Defendants moved the Court to clarify or reconsider the scope of  
16 the Opt-In Order. See Docket No. 148. The Court denied that  
17 motion and ordered the parties to meet and confer to resolve any  
18 remaining dispute regarding the interpretation or application of  
19 the Opt-In Order. See Docket No. 154.

20 The Opt-In Order required Defendants to produce the names and  
21 addresses of all 24 Hour Fitness employees covered by that Order  
22 to Plaintiffs' counsel and the Notice Administrator, CPT Group.  
23 See Opt-In Order, at 2. On July 9, 2007, Defendants produced a  
24 list containing the names of approximately 2,300 individuals  
25 covered by the Opt-In Order. See Donahoo Decl., ¶ 2. Despite the  
26 parties' attempts to reach agreement regarding the scope of the  
27 Opt-In Order, Plaintiffs allege that the list of names Defendants

1 produced is deficient in two ways: 1) the list excludes entire  
2 groups of people that Plaintiff argues are part of the class and  
3 should receive the Notice (i.e., Floor Supervisors); and 2) the  
4 list excludes numerous individuals who are within groups that  
5 Defendants admit should receive notice. See Mot., 7-8.

6 Plaintiffs' counsel sent a letter to Defendants' counsel on  
7 July 11, 2007, containing a series of questions regarding the list  
8 of names Defendants had produced, and requesting a response by  
9 July 16. See Donahoo Decl., ¶ 7, Ex. D. Defendants' counsel  
10 answered some of the questions by letter on July 19, 2007, but  
11 objected to and refused to answer others. See Donahoo Decl., ¶ 8,  
12 Ex. E. The parties continued to discuss the list of names, but  
13 were unable to resolve their dispute.

14 Plaintiffs brought the instant motion for leave on July 24,  
15 2007, and requested that the Court take immediate action because  
16 the deadline for sending the facilitated notice pursuant to the  
17 Opt-In Order was approaching. On August 8, 2007, without further  
18 action from the Court, the Notice Administrator sent the required  
19 Notice to all of the 24 Hour Fitness employees on the list  
20 Defendants had provided.

### 21 22 **III. DISCUSSION**

23 Plaintiffs have demonstrated that Defendants' list of names  
24 for facilitated notice is incomplete. See Donahoo Decl., ¶¶ 11-  
25 43; Lee Decl., ¶¶ 1-2; Geneser Decl., ¶¶ 1-2; Phillips Decl., ¶¶  
26 1-2. The Court therefore GRANTS Plaintiffs leave to bring their  
27 motion to compel the supplemental production of names and  
28

1 addresses.

2 Pursuant to the Opt-In Order, if the parties were unable to  
3 resolve any issues related to the list of names through the meet  
4 and confer process, either party could request leave of Court to  
5 file a motion; if the Court granted leave, the time for sending  
6 out the required Notice would be tolled until the dispute was  
7 resolved. See Opt-In Order, ¶ 8. Although Plaintiffs sought  
8 leave in a timely manner, the Court did not act on that request  
9 prior to the deadline for sending the Notice. For the purposes of  
10 any additional individuals Defendants disclose as a result of  
11 relief granted herein, or as a result of Plaintiff's subsequent  
12 motion to compel, the time for filing notice shall be deemed  
13 tolled as of July 27, 2007, the date on which Plaintiffs brought  
14 the instant motion for leave.

15 Upon resolution of the motion to compel, Plaintiffs shall  
16 give the list of additional names to the Notice Administrator, and  
17 the Notice Administrator shall send the Notice and "Consent to  
18 Join" form to all of the new people on the list. Those  
19 individuals must return the "Consent to Join" form no later than  
20 sixty (60) days after the date on which the Notice Administrator  
21 mails the Notice. Additionally, the deadline for those  
22 individuals who received the Notice sent August 8, 2007, to return  
23 their "Consent to Join" forms shall be extended to coincide with  
24 the deadline for those now receiving the Notice for the first  
25 time. Within ten (10) days of the close of the extended opt-in  
26 period described above, all "Consent to Join" forms shall be filed

1 with the Court.<sup>1</sup>

2 Plaintiffs also ask the Court to require Defendants to answer  
3 a series of questions relating to the list of names, initially  
4 presented in a letter to Defendants' counsel. See Mot., at 6;  
5 Donahoo Decl., Ex. D. When Defendants previously asked the Court  
6 to clarify or reconsider the terms of the Opt-In Order, the Court  
7 ordered the parties to meet and confer regarding any remaining  
8 disputes. See Docket No. 154. Following the Court's order,  
9 Defendants did not engage in any meaningful attempt to resolve  
10 disputes over interpretation of the Opt-In Order; rather, they  
11 objected to Plaintiffs' questions and stuck to their own  
12 interpretation of the Opt-In Order. See e.g., Donahoo Decl., Ex.  
13 E, ¶ 1 ("This request is oppressive and burdensome." "Defendants'  
14 interpretation of the Court's orders is..."). Given that  
15 Plaintiffs have demonstrated Defendants' omission of individuals  
16 who are in groups both parties agree should receive the Notice, as  
17 well as the omission of entire groups of people from the list,  
18 Defendants' refusal to answer Plaintiffs' questions is  
19 unacceptable. The Court therefore GRANTS Plaintiffs' motion  
20 requesting an order that requires Defendants to answer the  
21 questions contained in the July 11 letter from Richard Donahoo to  
22 Lisa Chagala (Exhibit D to the Donahoo Declaration).

23 Plaintiffs also ask the Court to order Defendants to identify  
24 and make available for deposition a person most knowledgeable

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26 <sup>1</sup>If Defendants do not disclose any additional names, the  
27 Notice Administrator will not need to send the Notice again, and  
28 the opt-in period will not be extended.

1 ("PMK") about Defendants' efforts to comply with the Opt-In Order.  
2 From communication between counsel, it appears that Defendants  
3 were previously willing to produce a PMK for deposition if  
4 Plaintiffs still required the deposition after resolving the  
5 disputes over the Opt-In Order. See Donahoo Decl., Ex. C. The  
6 Court therefore DENIES Plaintiffs' request that the Court order  
7 Defendants to identify a PMK for deposition as premature.  
8 Defendants have indicated their willingness to cooperate on this  
9 deposition once the list of names is final. If, after resolution  
10 of Plaintiffs' motion to compel, the deposition is necessary and  
11 Defendants refuse to cooperate, Plaintiffs may then move to compel  
12 the deposition.

13 Finally, Plaintiffs seek an order requiring the parties to  
14 brief whether or not sanctions against Defendants are appropriate.  
15 As the briefing would depend on the PMK deposition discussed  
16 above, it would be premature to order that briefing now. The  
17 Court therefore DENIES this request. After Defendant complies  
18 with this Order and answers the questions regarding compliance  
19 with the Opt-In Order, and following the resolution of Plaintiffs'  
20 motion to compel, if Plaintiffs depose the PMK and still believe  
21 sanctions are appropriate, they may seek leave to file a motion  
22 for sanctions.

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24 **IV. CONCLUSION**

25 For the foregoing reasons, Plaintiffs' motion is GRANTED IN  
26 PART and DENIED IN PART. The Court hereby ORDERS as follows:

- 27 1. Plaintiffs may file a motion to compel supplemental  
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1 disclosure of names and addresses for facilitated notice.

2 2. Plaintiffs shall file their motion to compel no later  
3 than September 7, 2007; Defendants shall file their Opposition no  
4 later than September 21, 2007; Plaintiffs may file a Reply no  
5 later than September 28, 2007; the motion to compel is set for  
6 hearing before the Court on October 12, 2007, at 10:00 a.m.

7 3. Defendants shall provide written answers to Questions 1,  
8 3, 5, 6, and 8 in the July 11, 2007, letter from Richard Donahoo  
9 to Lisa Chagala (Exhibit D to the Donahoo Declaration) no later  
10 than September 5, 2007.

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12 IT IS SO ORDERED.

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14 Dated: August 28, 2007.

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17 UNITED STATES DISTRICT JUDGE  
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